



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR95-784

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30628.

The Travis County Attorney (the "county attorney") received a request for copies of the county attorney's file in Cause Number 93-3725, a criminal case in which the defendant has been convicted and sentenced. The requestor is the defendant's attorney. You have submitted the requested information to us for review as exhibits A through C. You contend that section 552.101 excepts from disclosure exhibits A and B. You also argue that sections 552.103 and 552.111 except from disclosure all the information you submitted for review.

We first address your contention that section 552.101 of the Government Code excepts from disclosure the information in exhibits A and B. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section applies to information made confidential by specific statutes and to information considered private under the concept of common-law privacy. See Open Records Decision No. 584 (1991) (information concerning welfare recipients made confidential by Hum. Res. Code); *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) *cert. denied*, 430 U.S. 931 (1977) (information about injuries to intimate body parts protected from disclosure by concepts of constitutional and common-law privacy).

Exhibit A consists of criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. You argue that federal and state law except the CHRI from disclosure. We agree. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor by the city except in accordance with federal regulations. See Open Records Decision No. 565 (1990). Furthermore, any CHRI received from DPS must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.¹

Exhibit B consists of one form entitled "Statement of Fact Form." You contend that article 42.18, section 18 of the Code of Criminal Procedure makes this document confidential. Article 42.18, section 18 provides as follows:

All information obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any proposed plan of release for a prisoner, including victim impact statements, lists of inmates eligible for parole, and inmates' arrest records, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the governor, the members of the board, and the Criminal Justice Policy Council to perform its duties under Section 413.021, Government Code, upon request. It is further provided that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.²

¹Article 60.06(b) of the Code of Criminal Procedure does not, by itself, make any information confidential. This section merely provides that certain CHRI may be released only "as authorized by federal or state law or regulation."

²The Seventy-fourth Legislature amended section 18 of article 42.18. See Act of May 19, 1995, 74th Leg., R.S., ch. 258, § 13, 1995 Tex. Sess. Law Serv. 2205 (to be codified at V.T.C.S. art. 42.18, § 18);

This provision accords confidentiality to the records of the Board of Pardons and Paroles. Open Records Decision No. 190 (1978) at 2; *see also* Attorney General Opinion H-427 (1974); Open Records Decision No. 33 (1974). It does not, however, make confidential records in the custody of the county attorney. We conclude, therefore, that the county attorney may not withhold under section 552.101 of the Government Code the information submitted as exhibit B.

We next address your contention that section 552.111 in conjunction with the attorney work-product doctrine excepts all of the requested information from disclosure. In the past, this office has concluded that in the context of the Open Records Act the work-product doctrine applies only upon a showing that section 552.103(a) applies. *See* Open Records Decision No. 575 (1990). However, the issues you raise with respect to attorney work product are the subject of pending litigation in *Holmes v. Morales*, No. 93-07979 (261st Dist. Ct., Travis County, Tex., Feb. 14, 1994), which is now on appeal to the Third District Court of Appeals, *Holmes v. Morales*, No. 03-94-179-CV (Tex. App.--Austin argued Feb. 15, 1995). In light of the pendency of this litigation, ruling on your claims regarding work product would be inappropriate for this office. At this point, the outcome of the *Holmes* case may resolve your claims and may moot any decision this office might reach on those claims.³ For these reasons, we decline to rule on the issues you raise regarding attorney work product, and you may withhold the requested information pending the outcome of the *Holmes* case.

We also remind you that even if section 552.103 or section 552.111 excepts attorney work product from required public disclosure under the Open Records Act, both exceptions are discretionary. *See* Gov't Code § 552.007; Open Records Decision Nos. 542 (1990) at 4, 464 (1987) at 5. Section 552.007 provides as follows:

(a) This chapter does not prohibit a governmental body or its officer for public records from voluntarily making part or all of its records available to the public, unless the disclosure is expressly prohibited by law or the records are confidential under law.

(b) *Records* made available under Subsection (a) must be made available to any person. [Emphasis added.]

(Footnote continued)

Act of May 25, 1995, 74th Leg., R.S., ch. 321, § 2.011, 1995 Tex. Sess. Law Serv. 2809-10 (to be codified at V.T.C.S. art. 42.18, § 18). However, these amendments do not affect this request for information. *See* Act of May 19, 1995, 74th Leg., R.S., ch. 258, §§ 17-18, 1995 Tex. Sess. Law Serv. 2206; Act of May 25, 1995, 74th Leg., R.S., ch. 321, § 2.023, 1995 Tex. Sess. Law Serv. 2813.

³We note that the district court granted summary judgment for the attorney general in *Holmes*, agreeing with this office's rulings to the Harris County District Attorney regarding attorney work product.

The county attorney may, therefore, choose to release to the public some or all of the requested records that are work product.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref: ID# 30628

Enclosures: Submitted documents

cc: Ms. Brenda Rhea
Attorney at Law
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(w/o enclosures)